

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AZIYO BIOLOGICS, INC.,

Plaintiff,

v.

**NAVIGATORS SPECIALTY
INSURANCE COMPANY and MCGRUFF
INSURANCE SERVICES, INC.,**

Defendants.

Case No. _____

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF DELAWARE:

PLEASE TAKE NOTICE that Defendant Navigators Specialty Insurance Company, by and through its undersigned attorneys, files this Notice of Removal pursuant to 28 U.S.C. §§ 1332 and 1441, removing the above-captioned case filed by Plaintiff from the Superior Court of the State of Delaware to the United States District Court for the District of Delaware. The grounds for removal are as follows:

HISTORY OF THE CASE

1. On or about September 30, 2022, plaintiff Aziyo Biologics, Inc., (“Plaintiff”), commenced the instant action by Complaint in the Superior Court of the State of Delaware, C.A. No. N22C-09-811 PRW [CCLD], against Defendant Navigators Specialty Insurance Company (“Navigators”) and Defendant McGriff Insurance Services, Inc. (“McGriff”). A true and correct copy of the Complaint is attached as Exhibit “1.”

CITIZENSHIP OF PARTIES

2. Plaintiff Aziyo Biologics, Inc., is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 12510 Prosperity Drive, Suite 370, Silver Spring, Maryland. See Complaint ¶ 19.

3. For diversity jurisdiction purposes, pursuant to 28 U.S.C. § 1332, Plaintiff is a citizen of the State of Delaware at all times material hereto.

4. Defendant Navigators Specialty Insurance Company is a corporation organized and existing under the laws of the State of New York with a principal place of business in Hartford, Connecticut.

5. For diversity jurisdiction purposes, pursuant to 28 U.S.C. § 1332, Navigators is a citizen of the State of New York.

6. Defendant McGriff Insurance Services, Inc. is a corporation organized and existing under the laws of the State of North Carolina with a principal place of business in Charlotte, North Carolina. See Complaint ¶ 21.

7. For diversity jurisdiction purposes, pursuant to 28 U.S.C. § 1332, McGriff is a citizen of the State of North Carolina.

8. There is complete diversity between Plaintiff and all Defendants pursuant to 28 U.S.C. § 1332.

THIS REMOVAL NOTICE IS TIMELY

9. The Complaint was filed on September 30, 2022.

10. Pursuant to 28 U.S.C. § 1446(b), “[t]he notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading”

11. Thirty (30) days from the first purported service upon defendant is October 31, 2022. As this Notice is being filed on or before that date, Navigator's Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).

AMOUNT IN CONTROVERSY

12. This action arises out of a claim by Plaintiff for declaratory relief concerning its contractual right to insurance coverage under an excess insurance policy that Navigators issued to Plaintiff. See Complaint ¶ 1.

13. Plaintiff additionally seeks damages arising from Navigators for breach of contract and breach of the duty of good faith and fair dealing. See Complaint ¶ 2.

14. Plaintiff also seeks damages from its insurance broker McGriff for breach of contract, negligence, and negligent misrepresentation stemming from its failure to procure adequate insurance coverage for Plaintiff. See Complaint ¶ 3.

15. Plaintiff alleges it obtained CNA primary layer "Life Sciences Liability" policy no. ADT 6079208689 for the policy period of Nov. 1, 2020 to Nov. 1, 2021, with an aggregate limit of \$10 million (the "CNA Primary Policy"). See Complaint ¶ 40.

16. Plaintiff alleges the CNA Primary Policy is followed by the first-layer excess products liability policy no. GA20LEX0BITTJNC issued by Navigators for the same policy period, which provides \$15 million of coverage in excess of the \$10 million in underlying limits. See Complaint ¶ 42.

17. Plaintiff alleges that in 2021 one batch of its FiberCel product allegedly became contaminated with a bacterial infection due to a donor having tuberculosis. This has led to scores of product liability claims (the "Claims") asserting exposure to and bodily injury from tuberculosis allegedly in the FiberCel batch. See Complaint ¶ 16.

18. Plaintiff alleges more than \$15 million will be needed by Plaintiff to defend and/or settle the Claims. See Complaint ¶ 17.

19. As a result of Navigators' denial of coverage for the Claims, in its Complaint Plaintiff alleges it is entitled to reformation of the contract against Navigators, seeks a declaratory judgment against Navigators, alleges a breach of contract against Navigators, alleges a breach of the duty of good faith and fair dealing against Navigators, alleges detrimental reliance on Navigators, alleges breach of contract against McGriff, alleges negligence against McGriff, and alleges negligent misrepresentation against McGriff. See Complaint, *passim*.

20. Plaintiff seeks contractual benefits as well as monetary damages in this matter. See Complaint, *ad damnum* clause.

21. It is believed, and therefore averred that, from a reasonable reading of the Plaintiff's Complaint, Plaintiff alleges monetary damages in excess of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs.

REMOVAL PREREQUISITES HAVE BEEN MET

22. This action is one over which this Court has original jurisdiction under 28 U.S.C. § 1332(a) and is one that may be removed to this Court by a Defendant pursuant to 28 U.S.C. §§ 1441(a) and (b), in that it is a suit constituting a dispute between citizens of different states and the matter in controversy exceeds the sum or value of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs.

23. The Notice of Removal has been timely made pursuant to 28 U.S.C. § 1446(b).

24. Defendant Navigators has sought no similar relief with respect to this matter.

25. Defendant McGriff Insurance Services, Inc., consents to the removal of this action from the Superior Court of the State of Delaware to the United States District Court for the District of Delaware. See Verification in Support of Consent to Removal attached at Exhibit 2.

26. Concurrent with the filing of this Notice, defendant Navigators is serving this Notice upon plaintiff's counsel, and will promptly file a copy of the Notice with the Prothonotary of the Superior Court of the State of Delaware.

WHEREFORE, notice is given that this action is removed from the Superior Court of the State of Delaware to the United States District Court for the District of Delaware.

Respectfully submitted,

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Dated: November 4, 2022